DOCUMENT RESUME

ED 251 369 SO 016 059

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TITLE Outcome and Process Control in Arbitration and Mediation.
PUB DATE Aug 84
NOTE 20p.; Paper presented at the Annual Meeting of the American Psychological Association (92nd, Toronto, Ontario, Canada, August 24-28, 1984).
PUB TYPE Information Analyses (070) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Arbitration; Comparative Analysis; *Conflict Resolution; Individual Power; *Locus of Control; *Psychological Characteristics; Research Methodology; Research Problems; Social Science Research
IDENTIFIERS *Mediation

ABSTRACT

Arguments and research studies examining whether people prefer arbitration or mediation to resolve a conflict between disputing parties are discussed, critiqued, and compared. In both mediation and arbitration a presumably neutral third party is involved, along with disputants, as an element of the dispute-resolution process. Mediation and arbitration differ primarily in terms of the role that is assigned to this third party. In mediation, disputants are actively charged with presenting information to each other and to the third party, while the third party is only allowed to propose or recommend a settlement. Under mediation, disputants have both high process control and high decision control. In arbitration, the disputants are in charge of the information to be presented, but the third-party decision maker has the authority to impose a decision after listening to the evidence. In arbitration, disputants have high process control but low decision control. The studies show that both voice (process control) and veto power (outcome control) are significant elements influencing people's feelings about the procedures they encounter. Current evidence is not sufficient to resolve the controversy. (RM)

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Outcome and Process Control in Arbitration and Mediation

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Running head: ARBITRATION AND MEDIATION

In E.A. Lind (Chair), Procedure and Participation in Organizations. Symposium conducted at the meeting of the American Psychological Association, Toronto, Canada, August, 1984. (Address correspondence to R. Folger, Psychology Department, S.M.U. Dallas, TX 75275.)

SP016 059

Outcome and Process Control in Arbitration and Mediation

Differences between mediation and arbitration are the basis for what has recently become a focal point of debate and controversy regarding procedural justice. As this debate has been joined thus far, I believe it has generated more heat than light. Thus one of my objectives will be to examine the nature of the controversy so as to clarify the relevant issues. Let me warn at the outset, however, that current evidence is not sufficient to resolve the controversy, nor am I in a position to offer evidence that would do so. Rather, it is a second objective of mine to suggest what kinds of evidence we need.

Mediation and arbitration are two of the most prominent examples of procedures that can be used in attempting to resolve a conflict between disputing parties. In both cases a presumably neutral third party is involved, along with disputants, as an element of the dispute-resolution process. Mediation and arbitration differ primarily in terms of the role that is assigned to this third party. In mediation, the disputants are "actively charged with presenting information to each other and to the third party, while the third party is only allowed to propose or recommend a settlement" (Thibaut & Walker, 1978, p. 546). In arbitration, however, "the third-party decisionmaker gains the authority to impose a decision after listening to evidence presented by the [disputing] parties" (p. 547).

Arbitration essentially corresponds to the adversary legal system familiar to Americans because of its common courtroom use in the United States. As such, it can also be contrasted with a third major type of dispute-resolution procedure, best illustrated by the inquisitorial legal system used in Continental Europe. Such inquisitorial systems represent

a model of autocratic decision making. In the autocratic model, "the [third-party] decisionmaker not only holds the power to impose an outcome, but, in contrast to arbitration, the decisionmaker also has complete authority over the development and presentation of evidence" (p. 547).

The pioneering research of John Thibaut, Laurens Walker, and their colleagues (e.g., Thibaut & Walker, 1975) has led to the development of a theoretical framework that is useful in conceptually differentiating among these three dispute-resolution procedures (Thibaut & Walker, 1978; see also Walker & Lind, 1984). At the heart of this framework is a distinction between decision control and process control. Decision control (or outcome control) refers to "the degree to which any one of the participants may unilaterally determine the outcome of the dispute" (Thibaut & Walker, 1978, p. 546). Process control "refers to control over the development and selection of information that will constitute the basis for resolving the dispute" (p. 546). Stated in terms of the relative control provided to the disputants, as opposed to the third party, the conceptual differentiation among procedures can be described as follows: (a) Under mediation, disputants have both high decision control and high process control. (b) Under arbitration, disputants have low decision control but high process control. (c) Under autocratic decisionmaking, disputants have low decision control as well as low process control.

Furthermore, Thibaut & Walker's conceptual framework has been coupled with research evidence to provide not only descriptive statements such as those cited above, but also a prescriptive or normative statement. Thibaut and Walker (1978) assume that the moral objective in trying to resolve conflicts of interest fairly is to achieve distributive justice, or the

proper division of outcomes among the disputants. Given this assumption, their prescriptive statement is as follows: "Our research suggests the need, under conditions of high conflict of interest, to adopt a procedural model which ...reserves virtually all process control to the disputants, but which ...assigns decision control to a third party" (p. 551). That is, "the procedural model best suited to the attainment of distributive justice in disputes entailing high conflict of interest is arbitration, or more specifically in legal settings, the Anglo-American adversary model" (p. 551). Thibaut and Walker's research also suggests that arbitration (the adversary model) is perceived to be the fairest system for resolving disputes and will be the procedure most preferred by disputing parties (e.g., see Thibaut & Walker, 1975.)

Debate regarding the merits of this conclusion was joined at last year's Academy of Management meeting, where Jeanne Brett (1983) delivered a paper on "Procedural Justice." At that meeting, Brett made the following remarks:

> I think Thibaut and Walker's conclusion is wrong. I believe that procedures for resolving conflicts of interest (conflicts over the distribution of outcomes) will be perceived to be most fair when the procedure places much control over the outcome in the hands of the disputing parties. (p. 1)

Brett's thesis can be conveniently divided into two related parts. First, her position entails the prediction that mediation is preferable to arbitration; in terms of a between-subjects design, for example, the prediction is that satisfaction ratings of the former procedure would be higher than ratings of the latter. Second, disputants are hypothesized to

have a greater interest in being provided outcome control (i.e., decision control) than they have in being provided process control.

These two parts of the thesis are related because the first should be a consequence of the second. As Brett (1983) has stated the second part, "perceptions of procedural justice are a function of perceptions of control over outcome" (p. 3); that is, in conceptualizing the association between a given procedure on the one hand and satisfaction ratings of that procedure on the other, perceived outcome control is taken to be the key intervening variable. Mediation differs from arbitration by placing direct control over the final outcome in the hands of the disputants (i.e., in contrast to arbitration, mediation does not permit the third party's recommendation to become binding). Mediation should be preferred over arbitration, therefore, because it provides greater control of the type that disputants are presumably most interested in having.

As described, Brett's position seems to hold little regard for process control at all. That viewpoint is provocative considering the strong effects of process control repeatedly demonstrated by Thibaut, Walker, and their colleagues as well as by others (e.g., Folger, 1977; Folger, Rosenfield, & Hays, 1978; Folger, Rosenfield, Belew, & Corkran, 1979; Tyler, 1984; Tyler & Folger, 1980; for reviews, see Folger & Greenberg, in press; Greenberg & Folger, 1983; Walker & Lind, 1984). Brett offers two explanations. One has to do with the research strategy followed by Thibaut, Walker, and their colleagues. Early in this research program, attention turned away from mediation because it seemed inadequate to ensure dispute resolution when there were strong conflicts of interest (i.e., without binding third-party authority, the resolution could be stalemated by the veto power each disputant possessed). Attention was focused instead on comparisons between

arbitration (the adversary model) and autocratic decision making (the inquisitorial model), two systems that hold outcome control constant and vary process control. The former was found to be preferred by disputants, presumably because it offered them greater process control.

The second explanation is couched in terms of an interpretation regarding what process control really has to offer disputants. Brett's interpretation (not entirely inconsistent with Thibaut and Walker's--see their 1978 paper, for example) is that process control in effect serves as a proxy for outcome control. To explicate this interpretation, perhaps it will be helpful to revert from Brett's term, outcome control, back to Thibaut and Walker's term, decision control. Under mediation, the decision control possessed by disputants gives them relatively direct control over their outcomes (i.e., veto power over undesirable outcomes). In contrast, the process control possessed by disputants under arbitration gives them a relatively indirect form of control over their outcomes--namely, the form of control that comes from being in a position to persuade the third-party decisionmaker as to what those outcomes should be (or presumably to maximize the effectiveness of those persuasion attempts, at least relative to what would be possible if disputants had no role whatsoever in the collection and presentation of evidence).

Effective persuasion directed toward an arbitrator, in other words, serves to convert disputant process control into (indirect) outcome control, even though the actual decision control remains in the hands of the arbitrator. It is in this sense that disputant process control provides a substitute for disputant decision control. Brett's argument, therefore, is that the preference for arbitration over autocratic decisionmaking is

not really a function of differences in disputant process control per se, but a function of differences in indirect outcome control. In support of this contention, she cited Lind, Kurtz, Musante, Walker, and Thibaut's (1980) own evidence that a manipulation of disputant process control (arbitration vs. autocratic decisionmaking) had an effect on perceptions of outcome control: disputants in arbitration conditions reported perceiving greater control over their outcomes than did disputants in autocratic-decisionmaking conditions, even those whose outcomes were held constant (as was decision control).

Brett (1983) has also provided evidence that mediation is preferable to arbitration. This evidence comes from a study of labor-management disputes in the bituminous coal industry. Of the companies being investigated, some were participating in an experimental program involving the mediation of disputes, whereas others were not participating and hence had recourse only to arbitration. Regardless of the level of outcomes, greater satisfaction with the procedure was expressed by disputants under mediation than was expressed by disputants under arbitration (see Table 1).

Several features of this study render it problematic. If differences in the effects of mediation versus arbitration are to be interpreted as reflecting differences in outcome control, then process control must be held constant. It is not clear, however, that this was the case. Consider the following comments taken from Brett's (1983) description of differences between mediation and arbitration:

> Arbitration [is] ... an adversarial system in which the rules of evidence apply. Mediation, in which the rules of evidence do not apply, is a decidedly less formal system than is arbitration. One result of this informality is that the

> disputants perceive control over what gets introduced as evidence and the meaning of that evidence. (pp. 2-3)

Is this a difference in process control independent of any outcome control, or a difference in process control as indirect outcome control? Either way, there is a difference in some form of control that is confounded with the difference in third-party decision control presumed to be the sole influence on satisfaction. Given these data, in other words, we cannot confidently infer to which sources of control the satisfaction differences are attributable.

Another feature that makes the Brett (1983) study problematic is the correlational nature of its data. In particular, the lack of random assignment to mediation versus arbitration makes it possible to propose various third-variable explanations. Mediation was introduced as part of an experimental program expanding the range of settlement mechanisms, and there might have been a number of differences between the companies participating in this program (or grievants at those companies) and the companies that did not participate (or grievants there). Also, introduction of a special program might in itself have enhanced satisfaction, since it represented a resource not previously available. These and other factors suggest intervening mechanisms instead of, or in addition to, the outcome-control difference between mediation and arbitration. Because this study did not collect data relevant to the intervening psychological mechanisms, such alternative interpretations cannot be ruled out.

A survey study conducted by Tyler (1984; Tyler, Rasinsky, & Spodick, in press) is germane to some of these issues. Tyler's survey questionnaire, administered to a sample of defendants in traffic and misdemeanor court,

contained measures relevant to two of the intervening psychological mechanisms that have been discussed: perceptions of process control and perceptions of outcome control. Responses from two questions--"How much opportunity did you have to present evidence in your case?" and "How much control did you have over the way in which the evidence in your case was presented?"--were indexed to assess process control (r=.63). Outcome control was assessed in terms of the following question: "How much control did you have over the way your case was decided?" Satisfaction with the procedure was assessed by having respondents indicate whether the court-room procedure had been "very just," "somewhat just," "not very just," or "not just at all" (in answer to a question regarding how "just and impartial" the procedures utilized were).

Independent effects of both process control and outcome control on procedural satisfaction were suggested by the results of a regression analysis. Specifically, process control accounted for unique variance in satisfaction ratings beyond that explained by outcome control, and outcome control accounted for unique variance in satisfaction ratings beyond that explained by process control (as demonstrated in a "usefulness" analysis). These results suggest that contrary to Brett's analysis, perceived outcome control is not the only intervening variable affecting procedural satisfaction. Furthermore, the effects of process control are not due entirely to its role as a proxy for outcome control (i.e., as a source of indirect outcome control); although the measures of process control and outcome control were correlated (r=.42), the effects of process control were significant even after those attributable to outcome control were removed from it (this is a restatement of the usefulness-analysis finding).

Of course, Brett's position is partially supported in that the effects of outcome control were also significant after removing those of process control. Note also that these effects were obtained in an adversarial context (i.e., arbitration), in which direct outcome control is nonexistent due to the third party's rendering of binding decisions. Indeed, ratings of outcome control were generally low. The indication that there were still effects of perceived outcome control, despite its absence in a direct form, implies that indirect outcome control--the perceived ability to influence the third-party decisionmaker--is important. Moreover, since Tyler's study examined only one type of procedural system rather than comparing mediation and arbitration, it does not constitute a fair test of Brett's hypothesis that direct outcome control (i.e., the veto power disputants have under mediation) is also important.

A more explicit test concerning the effects of process control, relative to those of direct outcome control (disputant decision control), comes from results obtained by Lind, Lissak, and Conlon (1983). This study was a laboratory experiment in which process control and outcome control were manipulated independently. That is, the third party either had the authority to render binding decisions or did not (low vs. high disputant outcome control), and disputants either had a role in evidence presentation or did not (high vs. low disputant process control). The impact of these manipulations on a measure of procedural satisfaction is shown in Table 2.

The results showed that process control had an impact (significant main effect) whereas outcome control did not. This finding is clearly contrary to Brett's hypothesis about the importance of direct outcome control, such as that provided to disputants under mediation by means of

their being allowed to unilaterally reject any proposed resolution. Lind et al. (1983) commented on this absence of an outcome-control main effect as follows:

> The absence [of this effect]...suggests that reactions to procedures may be less influenced by consideration of control over the likely outcome of the procedure than had been suggested by some....Problems of inference from null findings must be kept in mind, but it is rather remarkable that the capacity to veto the decision maker's verdict had no substantial effect on judgments...of the procedure, even when the judgment [i.e., verdict] was quite unfavorable to the subject. (p. 347)

Thus just as Brett's position downplays the impact of process control, so that of Lind et al. downplays the impact of outcome control.

There is some reason to question the generalizability of the conclusions drawn by Lind et al. In stating that there was no "substantial" effect of outcome control, they were contrasting the absence of a significant effect for outcome control with the presence of a significant effect for process control. The significance of the latter, however, derives as much from the consistency of the high-versus-low process control comparisons (favoring high process control in all four cases) as from the magnitude of the differences (which averaged across the four cases was approximately one scale point on a nine-point scale).

In contrast, the effect of outcome control was inconsistent. With respect to the two comparisons in which process control is held constant at the low level, there is virtually no detectable difference due to high-versus-low outcome control--and in the single case where there is a slight difference favoring low outcome control (among winning subjects), that

difference was slightly reversed on another scale (one measuring procedural fairness rather than satisfaction). With respect to the two comparisons in which process control is held constant at the high level, opposite effects of outcome control were obtained (in each case amounting to slightly more than one scale-point mean difference). Specifically, subjects who lost were more satisfied with high outcome control than were those who had low outcome control, whereas subjects who won were less satisfied with high outcome control than were those who had low outcome control.

Assuming that mediation and arbitration ordinarily provide (or can be implemented so as to provide) an equivalently high degree of process control to disputants, it is this last set of findings from the Lind et al. experiment--the means in the high process-control conditions--that should be most directly comparable to conditions in the Brett field study and yet are inconsistent with them. There is, however, a major methodological difference between the two studies. Brett's subjects rated the procedure after they knew what outcome it had produced. When the subjects in the Lind et al. study rated the procedure, on the other hand, not all of them could be so confident about the outcome. Specifically, those in the high outcome-control conditions rated the procedure after they had heard the determination of the third-party hearing officer, but before any opportunity had been given to either disputing party to reject the hearing officer's decision. These high outcome-control subjects were thus aware that the final outcome was uncertain: it would be open to modification if either they themselves or the other disputing party challenged it, in which case the outcome would be determined by the results of a subjsequent bargaining session. (If the dispute could not be resolved in that session, the monetary award being contested would not go to either disputant.)

This methodological difference seems critical to interpreting the effects of outcome control among winning subjects, where the Lind et al. data are discrepant from those obtained by Brett. It appears that for the Lind et al. winners, high outcome control had a catch to it. That is, although they had won on the basis of the hearing officer's determination, that win was not ensured--in fact, they might still ultimately lose (if the other disputing party contested the decision and the bargaining session ended in a stalemate). In contrast, the corresponding winners who had low outcome control were assured of their win, and this assurance may be the reason why they were more satisfied with the procedure than their high outcome-control counterparts.

Although this interpretation can account for the reversed effect of outcome control among the winning subjects in the Lind et al. study (and hence the inconsistency that partially prevented a main effect for outcome control), it does not help explain why there was no effect for outcome control among the losers in the low process-control conditions. (The low process-control conditions were momentarily dismissed above as being not very germane to actual arbitration and mediation, but they are now being considered because their effects also helped contribute to the absence of a main effect for outcome control.) Let me advance one additional, admittedly speculative, interpretation. The question is why low process control, high outcome-control losers would not find the procedure more satisfying than did low process-control, low outcome-control losers, especially in light of the opportunity for subsequent outcome modification available to the former but denied to the latter. The answer may once again lie in the timing of the questionnaire. At the time this questionnaire was administered, the low process-control/high outcome-control losers had just

finished going through what amounted to the less satisfying phase of a two-stage procedure (as opposed to the low process-control/low outcome-control losers, whose procedure consisted of only one phase). That is, they had just gone through a phase in which they had no say in the proceedings; in contrast, they were aware of a second-phase optional session in which they could have complete say over the presentation of their viewpoints. What I am suggesting is that perhaps this contrast effect served to dampen satisfaction ratings in this condition (relative to what they otherwise might have been) and thus to mitigate against an overall main effect for outcome control. (Note that this contrast effect was prohibited in the losing high process-control/high outcome-control conditions, since these subjects did have a say in the proceedings during the first phase.)

This interpretive speculation serves to highlight an aspect of process control that has received short shrift in my discussion so far. That is, in speculating about the possibility of a contrast effect, I have assumed that people will be relatively dissatisfied with proceedings in which they have no say, compared to those in which they do have some say. Elsewhere (e.g., Folger, 1977) I have borrowed the term voice from a political economist (Hirschman, 1970) to describe this aspect of process control. Here I would like to distinguish having voice per se from the indirect outcome control (converted process control) that coincides with perceptions of having actually influenced a decisionmaker. It is the effects of voice per se that are suggested by Tyler's usefulness analysis, which showed that having a say in the presentation of evidence accounted for unique variance in procedural ratings even when the effects of indirect outcome control had been removed. Apparently people find satisfaction in the intangible respect or recognition that comes from being given voice, and they are interested

in this source of respect/recognition independently of whatever instrumental value it might have. It is this conclusion that Brett's position seems to deny, and my reading of the evidence to date makes me disagree with her at that point.

On the other hand, my reading of the current evidence also leads me to disagree with the negative conclusion Lind et al. have drawn regarding the effects of outcome control. As I have suggested, their failure to find an outcome-control main effect may be a methodological artifact. And although Brett's field study also may have some methodological problems involving a confound between process control and outcome control, Tyler's results have indicated that outcome control has an impact even when effects due to process control are statistically removed.

My conclusion, then, is that both voice and veto power are significant elements influencing people's feelings about the procedures they encounter. While the existing evidence is not so straightforward as we would like it to be, neither is it so one-sidedly in favor of either camp as to foreclose the other's position. What we need is a compromise that can attest to the valid aspects of both views. Is there a mediator in the house?

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Table 1

Mean Procedural Satisfaction Ratings of Grievants

Procedure	Grievant Lost	Grievant Won
Mediation	1.47	3.00
Arbitration	1.10	2.83

Note. Based on Brett (1983). Responses were to a 3-point scale on which 1 = dissatisfied, 2 = neither satisfied nor dissatisfied, 3 = satisfied.

Table 2

Mean Procedural Satisfaction Ratings of Disputants

Condition	Disputant Lost	Disputant Won
High Outcome Control		
High Process Control	5.9	6.0
Low Process Control	3.9	5.9
Low Outcome Control		
High Process Control	4.8	7.1
Low Process Control	3.9	6.2

Note. Based on Lind, Lissak, and Conlon (1983) and on Walker and Lind (1984). Condition labels refer to disputant control. Responses were to a 9-point scale on which higher numbers represented greater satisfaction.